

**BOARD OF REGISTERED NURSING**

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Ruth Ann Terry, MPH, RN
Executive Officer

DATE: October 18, 2002

SITE: Board of Registered Nursing
400 R Street Suite 4030
Sacramento, CA 95814

MEMBERS PRESENT: LaFrancine Tate, RN

STAFF PRESENT: Susan Brank, Assistant Executive Officer
Elliot Hochberg, Enforcement Program Manager
Kathy Meyer, Diversion Program Manager
Usrah Claar-Rice, NEC
Marlene Rose, Diversion Technician

OTHERS PRESENT: Dorianne Sandman, Director – MHN HPDP

LaFrancine Tate called the meeting to order at 10:00 a.m.

1.0 Committee Business

1.1 Approve/Not Approve minutes of August 1, 2002.
Action was deferred on approval of the minutes.

2.0 Enforcement Program

2.1 Information Only: Program Update and Statistics

Attached are the Enforcement Program statistics for the first three months of fiscal year 2002-2003 (July 2002 through September 2002).

Statistics for the first three months are preliminary and projections are subject to change. A potentially significant statistic is the increase in the number of complaints. There is a projected 38% increase in the number of complaints over the last fiscal year (2,132 versus 1,541). Complaint intake staff attributes this to increased arrests/convictions information forwarded to the Board by the Department of Justice. This information is available as a result of the Board's fingerprinting requirements prior to licensure.

The filing of accusations was anticipated to increase once budget constraints imposed during the past two fiscal years had been lifted. Projections indicate that this has also occurred. There is a projected 55% increase over the last fiscal year (360 versus 232).

We will continue to monitor these preliminary statistics, with special emphasis on following activity by the Attorney General's Office and Division of Investigation on the large number of complaints received for fiscal year 2002-2003.

1.0 Recent Decision of the California Supreme Court Relating to Cost Recovery

A summary and discussion of *Zuckerman v. Board of Chiropractic Examiners* was provided to the Enforcement Program Manager by the Attorney General's Office. This case involved a chiropractor that was accused of sexual misconduct with two female patients. The chiropractor requested an administrative hearing. The Board of Chiropractic Examiners has a cost recovery regulation that is similar to the statute that applies to most other Boards, such as the Board of Registered Nursing (section 125.3 of the Business and Professions Code). The Board sought \$30,000 in costs. An administrative law judge upheld the Board's charges, disciplined the licensee, and found \$17,500 in costs to be reasonable. The discipline and cost award were upheld by the Los Angeles Superior Court.

However, based on a 1999 court ruling involving the *California Teachers Assn. v. State of California*, the Court of Appeal held the Board's regulation authorizing an order to pay pre-hearing costs of investigation and prosecution unconstitutional.

The California Supreme Court upheld the constitutionality of the Board's cost recovery regulation. However, the four-justice majority determined that for such awards to be constitutional, regulatory agencies must consider and act appropriately on the following criteria:

1. The proportion of the wrongdoing proven or in relation to the wrongdoing charged.
2. The licensee's "subjective good faith belief in the merits of his or her position" ...and whether the [licensee] has raised a 'colorable challenge' to the proposed discipline."
3. The financial ability of the licensee to pay the cost recovery awarded.
4. The relationship of the cost recovery sought to the seriousness of the wrongdoing established.

The reasonableness of the regulatory agencies' awards may be challenged by administrative mandamus.

The Board of Registered Nursing has not received any additional interpretation of the California Supreme Court decision, and the policy impact of this case has yet to be determined.

On October 17, 2002, Ruth Ann Terry, Susan Brank and Elliot Hochberg attended a meeting in San Diego with the Supervising Deputies to discuss the budget. 1.5 to 2.8 million was spent for each of the last 2 fiscal years. They discussed referrals and the concerns with the Attorney General's processes and the Office of Administrative Hearing's processes. The group brainstormed ways to facilitate settlement of cases in order to avoid going to hearing:

- Pilot Program in one field office in San Francisco will look at cases and offer a settlement conference as a proactive approach.
- Case aging process

- Reducing default decisions by setting some parameters
- Paralegals have been handling pleas
- Outside vs. in-house experts
- Cost Recovery
- Going to the Attorney General without first going through the Division of Investigation
- Deputy Attorney General cases – we have a 2-year opportunity to catch up on our 2-year backlog.

We will present this information to the full Board.

2.2 Approve/Not Approve: Proposed Regulation Change to Title 16, Section 1444.5, California Code of Regulations: Recommended Guidelines for Disciplinary Orders and Conditions of Probation (Disciplinary Guidelines)

The Disciplinary Guidelines are currently in the administrative regulatory process due to several amendments, the most recent of which was adopted by the Board on April 19, 2002. The additional amendments proposed would substitute the word “Board” for the words “Probation Program” and “Probation Monitor” in the conditions of probation.

These new amendments are necessary in order to provide needed flexibility for other designated Board staff assisting or involved in the decision making for the Probation Program. The conditions that will be amended were brought to the committee meeting. Copies of the Disciplinary Guidelines as well as the proposed amendments to the Disciplinary Guidelines were included for reference.

We will proceed with recommendations of the Committee to the full Board.
Action was deferred on the regulation change.

2.3 Approve/Not Approve: Proposed Legislative Change to Section 2760.1 of the Business and Professions Code

Section 2760.1 of the Business and Professions Code was added to statutes in 1994. It was amended in 1997 and again in 1998. This amendment would correct the effective date for registered nurse applicants to petition the Board for modification of penalty.

When applicants for licensure are placed on probation, they must first pass the licensing examination and meet all licensing requirements. However, current statute permits these applicants to use the effective date of the decision, rather than the effective date of licensure, for the time period for petitioning the Board for modification of their probation penalty. Sometimes, applicants do not pass the exam and become licensed months or even years after the effective date of the decision. This provides for unequal application of the statute compared with licensed registered nurses.

The proposed amendment to Section 2760.1(a), would limit applicants to only the time during which they have been licensed should they choose to petition the Board. We will proceed with recommendations of the Committee to the full Board.

Action was deferred on the proposed Legislative change.

.3.0 Diversion Program

3.1 Information Only: Program Update and Statistics

Diversion Evaluation Committees

The name of one nurse requesting appointment to a Diversion Evaluation Committee is being presented. In addition, there have been two resignations since the last Board meeting. If the appointment is approved, we will have 4 vacancies out of 65 positions (one physician, one nurse, and two public members).

Contract

The Department of Consumer Affairs has agreed to an increase in the per participant amount paid to the Diversion Program Contractor, Managed Health Network. The amount is now \$207.14 per participant, which is an increase of \$8.92. This increase was permissible under the current contract and is based on the Employer Cost Index.

Presentations

On September 19, 2002, the Diversion Program Manager gave a presentation about the Program to approximately twenty-five nurse managers at Mercy Hospital in Folsom.

Return To Work” Task Force

On September 17, 2002, the “Return To Work” Task Force met in Sacramento. The purpose of the task force was to develop criteria that would assist Diversion Evaluation Committee members in deciding when nurses participating in the Diversion Program should be given permission to return to practice. The discussion was very lively and there was considerable input. Staff is now in the process of preparing a draft of the criteria developed for distribution to the task force committee members for review. It is not anticipated that the committee will need to meet again. The information will be shared with the Board members when it is finalized.

Statistics

Attached is a report from MHN as well as their monthly statistical reports for July and August 2002. Also attached is the BRN’s Statistical Summary Report for those months. As of August 31, 2002, there were 903 successful completions and as of October 4, 2002, there were 412 participants. The most common specialty at Intake has changed from Medical/Surgical to Emergency Room. The most common drug used prior to Intake is Alcohol/Hydrocodone (Demerol).

Managed Health Network HPDP Director, Dorianne Sandman, presented her summary report for the period August, - October 2002. MHN has been able to reactivate many projects that had been shelved due to the urgent need to train new staff. The retention of staff has enabled us to standardize staff training as well as consolidate some tabled operational issues. Several new projects have been initiated.

- Currently in the process of completing an outline type guidebook on the specifics of how to read the revised History and Profiles. A copy of the completed manual will be sent to all the DEC members and Diversion staff. Members will be asked to read the manual and time will be reserved at their upcoming DEC’s for a question and answer session with the Case Managers.

- Twice weekly training sessions are being held at MHN to promote consistent operations by standardizing data entry applications for the Case Managers and Compliance Monitors. A consequence of having a preceptor type-training program in lieu of more formal classroom type training is that associates learn different methods of documenting the same results. Classes are also being given to increase synchronicity on operational procedures. These trainings will benefit everyone, including staff, clients and the Diversion Program staff.
- MHN is creating a Power Point presentation for Case Managers to use for educational presentations and speaking engagements. We made approximately eight presentations last year to various groups and would like to expand that number this year to increase awareness of the program and increase census. The presentation could also be used in DEC orientations.
- The third and final year of the DCA/MHN Diversion Program contract became effective July 1, 2002, and will expire June 30, 2003. MHN was awarded a 4.5% increase in the participant rate for the fiscal year 2002-2003 based on the 2002 ECI (Employer Cost Index). This is an increase of \$8.92 per participant. MHN looks forward to bidding on the new contract, which become effective July 1, 2003.
- The new billing and accounting procedures put into effect last year have been highly supported by the Boards and DEC members and have had a significant impact on balances owed in the categories of 30-60 days and 60-90 days in arrears.
- The overall balance for all active cases remains unacceptably high. It is \$67,392.69 for active cases. \$21,124.25 is outstanding for cases closed for reasons other than successful completion. This necessitates a need for a more aggressive action plan to prevent the accumulation of large balances, which are essentially forfeited if a client is closed for non-compliance. We are currently looking at increasing the bottom line for clients requesting payment plans. We are also hoping that when the Return to Work Guidelines have been disseminated this will result in a decreased debt amount in the early stages of the program.

3.2 Approve/Not Approve: Diversion Evaluation Committee Member Appointment

In accordance with Section 2770.2 (B&P), the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committee(s) of its Diversion Program. Each Committee is composed of three registered nurses, a physician and a public member with expertise in chemical dependency or mental health.

(a) Approve/Not Approve

Below is the name of one nurse who is being recommended for appointment to the Sacramento Diversion Evaluation Committee. Richard Jaco is a CRNA who is currently working at Kaiser Permanente in South Sacramento. For fifteen years he was the Chief Nurse Anesthetist at UCD Medical Center. He has experience participating in interventions with chemically dependent nurses and has taken part in the supervision and development of return to work contracts for those nurses. Mr. Jaco was interviewed and his philosophy about chemical dependency is consistent with the Board's philosophy. It is believed he will bring a unique perspective for dealing with return to work issues for CRNA's that will be valuable. Mr. Jaco was also highly recommended by Board President,

Sandra Erickson. His application and resume are attached. If appointed, his term will expire in 2006.

NAME

Richard G. Jaco

TITLE

Nurse Member

DEC

Sacramento, #1

Action deferred on approval of the appointment

(b) Information Only

Below are the names of two Diversion Evaluation Committee members who have had to resign due to health reasons. Their efforts were recognized with certificates and letters of appreciation on behalf of the Board.

NAME

Joseph Giannantonio
Jerilyn Lagus

TITLE

Public Member
Nurse Member

DEC

Los Angeles, #3
Burbank, #8

The meeting was adjourned at 10:55 a.m.

Submitted by:

Marlene Rose, Diversion Technician

Approved:

LaFrancine Tate, Diversion Discipline
Committee Member